

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Effects of Communications Towers on)	WT Docket No. 03-187
Migratory Birds)	DA 07-72

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ files this reply comment in response to the initial comments filed April 23, 2007, regarding the Federal Communications Commission's (Commission's or FCC's) Notice of Proposed Rulemaking (NPRM) on the effects of cell tower lighting on migratory birds.²

Commenters agreed with NTCA that the Commission should not enact tower regulations until presented with more evidence from avian/tower studies. Nearly all commenters who opposed new regulations cited the costs of regulation as a major factor for consideration. Preliminary cost estimates confirm NTCA's estimate of \$10,000 to retrofit an existing short (under 200 feet high) tower with white strobing lights.³ This expense supports NTCA's position

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *In the Matter of Effects of Communications Towers on Migratory Birds*, WT Docket No. 03-187, Notice of Proposed Rulemaking (rel. Nov. 7, 2006) (NPRM); Order extending time for comments, DA 07-72 (filed Jan. 12, 2007).

³ NTCA Comment, p. 6; DTC Wireless Comment, p. 6; Verizon Wireless Comment, p. 13. These cost estimates do not include the expense of other proposed rules, such as reconfiguring each tower and the array of towers to reflect changes in the use of guy wires, tower heights, or tower locations.

that the Commission should exempt small rural carriers from lighting regulations which are economically burdensome under the Regulatory Flexibility Act (RFA).⁴

Before enacting any regulations, the Commission should wait until the negotiating tower group and bird group (Solving The Avian-Tower Interaction Committee or “STATIC”) complete their negotiations on tower lighting and siting best practices guidelines. NTCA agrees with commenters that the FCC does not have sole jurisdiction over tower lighting and must not intrude on FAA jurisdiction.⁵ Finally, the Commission should heed requests by NTCA and others to allow a reasonable implementation period for any new tower lighting and siting rules adopted.⁶

I. More Studies Are Needed Before Imposing Costly Retrofit Burdens.

Commenters agreed with NTCA that the Commission should not enact tower regulations until presented with more evidence from avian/tower studies.⁷ The Infrastructure Coalition perceptively observed that broad-based, peer-reviewed research and results are necessary before adopting regulations.⁸ The Michigan studies presented by Dr. Gerhing are neither, a

⁴ NTCA Comment, p. 10. NTCA silence on any positions or proposals raised by other commenters in this proceeding connotes neither agreement nor disagreement by NTCA with those positions or proposals.

⁵ NTCA Comment, pp. 10-11.

⁶ NTCA Comment, p. 12.

⁷ NTCA Comment, pp. 5-6; Applied Technology Group Comment, p. 2; AT&T Mobility Comment, pp. 2-3; Citicasters Licenses Comment, p. 2; DTC Wireless Comment, p. 2; Hawaii and Rhode Island Broadcaster Associations Comment, p. 1; Land Mobile Communications Council Comment, p. 2; National Public Safety Telecommunications Council Comment, p. 3; PCIA, CTIA, National Association of Broadcasters, Wireless Communications Association International, National Association of Tower Erectors, and Association for Maximum Service Television, Inc. (“Infrastructure Coalition”) Comment, pp. 13-16; Sprint Nextel Comment, p. 5; State Broadcasters Association Comment, pp. i, 9; Union Telephone Company Comment, p. i; US Cellular Corp Comment, p. 3; Utilities Telecom Council Comment, p. 3; Verizon Wireless Comment, p. 2.

⁸ Infrastructure Coalition Comment, p. 3.

shortcoming that Dr. Gehring acknowledges as justification for more research.⁹ The Land Protection Partners' report is based on extrapolation, has not yet been peer-reviewed and states that more studies are needed regarding the effects of guyed versus unguyed towers and tower heights.¹⁰ Old Bird, Inc.'s assertion that "flashing lights are safer for night migrating birds than steady-burning lights" must be viewed in the context that its study site was "a lawn outside a rural residence 10 km south of Ithaca, Tompkins Co., New York," which does not qualify as a broad-based study.¹¹ The study offered by Old Bird, Inc., also appears to contradict the avian group's preference for white strobing lights.¹²

The American Bird Conservancy and others proposes 18 new tower regulations and contends that the FCC must conduct a NEPA programmatic EIS immediately because the existing administrative record conclusively demonstrates that communication towers will or may cause significant adverse affects on migratory birds.¹³ The Commission should not follow this path as the underlying basic assumption (millions of birds are killed by towers each year) has not been proven through adequate peer-reviewed studies.¹⁴ The Defenders of Wildlife and National Audubon Society assert that "a federal agency must prepare an EIS when an EA [environmental

⁹ Gehring Comment, pp. 43-45.

¹⁰ Land Protection Partners Comment, pp. 1, 7.

¹¹ Old Bird, Inc., Comment, pp. 1, 4-8.

¹² "While red light has been blamed for bird mortality at tall TV towers, our study indicates that for birds migrating within cloud cover, blue, green or white light would be more likely to induce bird aggregation and associated mortality." Old Bird Comment, Study p. 21.

¹³ American Bird Conservancy Comment, pp. 8-12; Audubon Connecticut Comment, p. 2; Defenders of Wildlife and the National Audubon Society Comment, pp. 11-12; New York State Ornithological Association (Andrew Mason) Comment, p. 1; Sierra Club (Elizabeth Walsh) Comment, p. 1.

¹⁴ Maranatha Broadcasting Company Comment, p. 2.

assessment] indicates that a proposed action will significantly affect the quality of the human environment.”¹⁵ The avian studies performed so far do not show a level of significant adverse effect sufficient to trigger a programmatic EIS. Without further broad-based, peer-reviewed studies, without adequate proof, the Commission does not need to conduct a programmatic EIS for tower lighting and sighting. The Commission should likewise not require rural tower owners or their rural customers to bear the financial burden of retrofitting existing towers.

The costs of regulation are a major factor for tower owners who would have to retrofit existing towers, especially rural carriers and municipalities. DTC Wireless and Verizon Wireless echoed NTCA’s estimate of \$10,000 per tower to retrofit an existing short (under 200 feet high) tower with white strobing lights.¹⁶ DTC Wireless accurately observed that the cost to construct a new tower, to modify an existing tower, or to collocate on an existing tower is substantial already.¹⁷ The results of new regulatory burdens from tower lighting will include, as DTC Wireless and others noted, delaying broadband deployment of services and infrastructure, reduced capital expenditures for maintenance and growth, and delayed development of digital television broadcast signal delivery models.¹⁸ The National Public Safety Telecommunications Council insightfully noted that the new regulations would impose additional costs on tower-owning local and state governments (and their residents).¹⁹ These costs can be prohibitive to the

¹⁵ Defenders of Wildlife and National Audubon Society Comment, p. 5.

¹⁶ DTC Wireless Comment, p. 6; Verizon Wireless Comment, p. 13.

¹⁷ DTC Wireless Comment, p. 1.

¹⁸ DTC Wireless Comment, p. 1; Maranatha Broadcasting Company Comment, p. 2; Union Telephone Company Comment, p. ii.

¹⁹ National Public Safety Telecommunications Council Comment, p. 7.

small rural carrier and support NTCA's position that the Commission should exempt small rural carriers from lighting regulations which are economically burdensome under the Regulatory Flexibility Act.²⁰

II. Negotiations May Solidify Consensus While The Commission Considers Jurisdiction and Implementation Matters.

STATIC, the negotiating tower group and bird group, is striving to complete their negotiations on tower lighting and siting best practices guidelines. NTCA agrees with the Infrastructure Group's view that the Commission should foster ongoing negotiations between infrastructure groups and avian environmental groups, rather than adopt regulations.²¹ The Commission should not interfere with these discussions as they may lead to meaningful consensus on tower lighting, guy wire, height and location issues, especially as they interact with peoples' complaints about the human visual impact of white strobing lights.²²

NTCA agrees with commenters that the FCC must scrutinize the nature and extent of the Commission's jurisdiction over tower lighting in light of the serious questions raised regarding whether the Commission is authorized or required to protect birds.²³ The FAA is still considering the Infrastructure Group's conspicuity study request on eliminating red sidelights for

²⁰ NTCA Comment, p. 9.

²¹ Infrastructure Coalition Comment, p. 57.

²² NTCA Comment, pp. 7-8; Utilities Telecom Council Comment, p. 11; Verizon Wireless Comment, p. 12.

²³ NTCA Comment, pp. 10-11; Infrastructure Coalition Comment, p. 16; Sprint Nextel Comment, p. 2; Union Telephone Company Comment, p. i; Verizon Wireless Comment, p. 7.

aircraft safety reasons, so the Commission should defer action until those results are available and reviewed.²⁴

Several commenters, including NTCA, urged the Commission to allow a reasonable implementation period for any new tower lighting and siting rules adopted.²⁵ The Utilities Telecom Council's proposed transition time of 10 years reflects a rural cooperative's need for extended time to retrofit existing towers. NTCA also agrees with the Utilities Telecom Council that the possible rule changes will have a major economic impact on small rural carriers who own communications towers.²⁶

III. Conclusion.

For these reasons, the Commission should not enact tower regulations until presented with more broad-based, peer-reviewed evidence from avian/tower studies. Because retrofitting an existing short (under 200 feet high) tower with white strobing lights will cost at least \$10,000 per tower and is burdensome, the Commission should exempt small rural carriers from new regulations which are economically burdensome under the RFA. The FCC should await the FAA conspicuity study results to assure aircraft safety. Before enacting any regulations, the Commission should allow STATIC, the tower group and bird group, to complete their

²⁴ Infrastructure Coalition Comment, p. 3.

²⁵ NTCA Comment, p. 12.

²⁶ Utilities Telecom Council Comment, p. 4.

negotiations on tower lighting and siting guidelines. Finally, the Commission should allow a reasonable implementation period for any new tower lighting and siting rules adopted.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
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May 23, 2007

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WT Docket No. 03-187, DA 07-72, was served on this 23rd day of May 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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